

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

CHEN CHONG SHU,)	
)	
Plaintiff,)	
)	Civil Action No. 03-409E
v.)	
)	Judge McLaughlin
UNITED STATES OF AMERICA,)	Magistrate Judge Baxter
)	
Defendant.)	(electronic filing)

**DEFENDANT’S MOTION FOR ENLARGEMENT OF TIME IN WHICH TO FILE
MOTION FOR SUMMARY JUDGMENT OR PRETRIAL STATEMENT**

AND NOW, comes Defendant, the United States of America (hereinafter “Defendant”), by its attorneys, Mary Beth Buchanan, United States Attorney for the Western District of Pennsylvania, and Christy Criswell Wiegand, Assistant United States Attorney for said district, and respectfully requests that the Court enter an Order enlarging the time in which Defendant may file its Pretrial Statement/Motion for Summary Judgment, stating as follows:

PROCEDURAL HISTORY

1. Plaintiff, a federal inmate, brought this pro se medical malpractice and negligence action pursuant to the Federal Tort Claims Act, 28 U.S.C. § 2670, et seq. (hereinafter “FTCA”), on December 15, 2003. See Docket No. 1.
2. Discovery in this case has closed, and Plaintiff’s pretrial statement was scheduled to be due on or before December 16, 2005.

3. Plaintiff failed to file a pretrial statement, and on December 20, 2005, the Court issued an Order requiring Plaintiff to show cause before January 3, 2005 for his failure to file a pretrial narrative statement.
4. Had Plaintiff filed his pretrial statement on or before December 16, 2005, Defendant's Motion for Summary Judgment or Pretrial Statement were scheduled to be due on or before January 10, 2006.
5. On December 20, 2005, Plaintiff filed a Notice of Change of Address, and Petition for Extension of Time to Stay Litigation Pending Retention For [sic] Counsel Assistance.
6. In his filing, Plaintiff indicated that he is now in the custody of the Department of Homeland Security, at the Clinton County Correctional Facility. Plaintiff requested that the Court stay this litigation pending "retention for counsel assistance." Plaintiff also stated that he had contacted outside counsel to request assistance with his prosecution of this action, and that outside counsel was reviewing the matter. Plaintiff further requested that, should he be unsuccessful in retaining his own counsel, the court appoint counsel on his behalf.
7. On December 22, 2005, Defendant filed a Response to Plaintiff's Petition for Extension of Time to Stay Litigation Pending Retention For [sic] Counsel Assistance, indicating that Defendant had no objection to a stay of this litigation, including a stay of the filing of Defendant's pretrial statement and or motion for summary judgment, pending Plaintiff's current efforts to secure the assistance of outside counsel.¹

¹Defendant also opposed Plaintiff's Motion to Appoint Counsel as premature, given that Plaintiff was in the process of having his own outside counsel review this matter. Defendant respectfully requested an opportunity to fully brief the issue of appointment of counsel in the event that the issue became ripe for review, should Plaintiff be unsuccessful in obtaining his own counsel.

8. On January 3, 2006, Plaintiff filed a Reply in Support of his Motion to Extend Time to Stay Litigation Pending Retention for [sic] Counsel Assistance, renewing his request for appointment of counsel on the ground that the law firm which was reviewing his case had declined to undertake representation.
9. Defendant has not yet filed a response to Plaintiff's January 3, 2006 Reply, but any such response will be due on or before Thursday, January 19, 2005, ten days from the date on which Defendant was served with Plaintiff's Reply.
10. In light of the fact that Plaintiff has not yet filed his pretrial statement, and because Plaintiff's Motion to Extend Time to Stay Litigation is currently pending before the Court, Defendant respectfully requests an enlargement of time in which to file its Pretrial Statement or, in the alternative, its Motion for Summary Judgment, pending resolution of Plaintiff's Motion to stay the litigation, and pending Plaintiff's filing of a pretrial statement.
11. Defendant further states that it will file its Motion for Summary Judgment or Pretrial Statement within thirty (30) days of service of Plaintiff's Pretrial Statement.

WHEREFORE, for the foregoing reasons, Defendant respectfully requests that the Court grant Defendant's Motion for Enlargement of Time to File Motion for Summary Judgment and/or Pretrial Statement, and permit Defendant to file its Motion for Summary Judgment or Pretrial Statement within thirty (30) days of service of Plaintiff's Pretrial Statement.

Respectfully submitted,

MARY BETH BUCHANAN
United States Attorney

\s\ Christy Criswell Wiegand
CHRISTY CRISWELL WIEGAND
Assistant U.S. Attorney
Western District of PA
U.S. Post Office & Courthouse
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Pittsburgh, PA 15219
(412) 644-3500

Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that I have served this date a copy of the within **DEFENDANT'S MOTION FOR ENLARGEMENT OF TIME IN WHICH TO FILE MOTION FOR SUMMARY JUDGMENT OR PRETRIAL STATEMENT** by first-class United States mail, upon the following:

Chen Chong Shu
Reg. No. 05-2913
Clinton County Correctional Facility
P.O. Box 419
McElhattan PA 17748

\s\ Christy Criswell Wiegand
CHRISTY CRISWELL WIEGAND
Assistant U.S. Attorney

Dated: January 10, 2006